1965

Christine E. Andrus v. Ida Allred : Respondent's Brief

IN THE SUPREME COURT

OF THE STATE OF UTAH

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CHRISTINE E. ANDRUS, :

Plaintiff and Respondent, :

-vs- :

IDA ALLRED, : Case No. 10282

Defendant and Appellant. :

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RESPONDENT'S BRIEF

Appeal from the Judgment of the Third District Court Salt Lake County. Honorable Stewart M. Hanson, Judge.

KIPP AND CHARLIER and
CRAIG T. VINCENT
520 Boston Building
Salt Lake City, Utah
Attorney for Respondent
and Plaintiff

STRONG AND HANNI and
LAWRENCE L. SUMMERHAYS
604 Boston Building
Salt Lake City, Utah
Attorneys for Appellant
and Defendant

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RESPONDENT'S BRIEF

STATEMENT OF NATURE OF CASE

This action was brought for damages for injuries suffered when the plaintiff was thrown to the ground by the sudden movement of defendant's unattended automobile as the plaintiff was attempting to alight therefrom.

DISPOSITION IN LOWER COURT

Both parties moved for summary judgment at the

pre-trial conference, and filed memorandas in support of their motions. The Court granted the plaintiff's motion, ruling that the defendant was negligent, that defendant's negligence was the proximate cause of the plaintiff's injuries, that plaintiff was not negligent, and the the Utah "guest" statute did not preclude the plaintiff from recovery. This appeal by the defendant is only from the last finding.

STATEMENT OF FACTS

While the facts set forth in Appellant's Brief are mainly accurate, the plaintiff does not accept the defendant's conclusions, and deems it necessary to point out additional facts relevant to the issue before the Court.

At the invitation of the defendant, Mrs. Andrus accepted a ride in the defendant's automobile to a local restaurant for a sandwich. Upon finishing their meal, the parties returned to the plaintiff's home, arriving there at approximately 9:30 o'clock p.m.

After visiting in the car for about five minutes, the parties opened the doors and began to get out. Although the defendant had left the engine running, the car in gear in drive position, and had failed to properly set the hand brake, the car was stationary as they began their exit. On previous occasions the plaintiff had required no assistance when leaving the defendant's automobile, although this night, the defendant decided to aid her. However, she did not tell Mrs. Andrus to stay in the car, nor is there any evidence that she issued some warning or caution. Deposition (R. 52), page 10; Answers to Interrogatories (R. 8-10), Nos. 7 to 10, 18, and 21.

In the Appellant's Brief relevant portions of the plaintiff's deposition are set forth detailing the events that then transpired. Mrs. Andrus stated that after opening her door and facing the outside, with one foot in the car and the other out (although she could not remember whether or not her right foot had touched the ground), and with her hand on the door handle, the

car began to roll forward. The defendant, at the rear of the car by this time, heard the plaintiff yell, "The car is rolling!" Deposition (R. 52), pages 7 to 9, and 11; Answers to Interrogatories (R. 9), No. 10. Referring to sequence, Mrs. Andrus further testified:

> "A. ...And it just seemed like when I was getting out of the car, it started to roll, and I hung on. I hung on to the door." Deposition (R. 52), page 7, lines 15 and 16.

and

> "Q. Did you try to get yourself back in the car and close the door?
>
> A. Yes, I did. I tried to pull myself in. See, I held onto that there door, you know. It had a catch on there, you know, to open the door, and I held onto that to try to pull myself back in, and it just kept a rolling until it throwed me off, off balance."

In considering the testimony of Mrs. Andrus regarding that moment, it is evident that just as she began rising from the seat, the car began rolling forward. She was far enough outside the car that she

was knocked off balance, and, while trying to pull herself back inside, was thrown to the ground. Mrs. Andrus was not certain as to how far the car rolled before she was thrown and injured, although she estimated the car went some fifty feet before coming to a stop against a parked automobile. Deposition (R. 52), page 11.

At the time of the accident Mrs. Andrus was 74 years old, lived along, enjoyed good health, and was able to care for herself. Because of the broken hip and broken shoulder suffered in the accident, it is unlikely that she will ever walk normally again.

ARGUMENT

POINT I.

PLAINTIFF WAS NOT A GUEST AT THE TIME OF THE ACCIDENT AND INJURY WITHIN THE MEANING OF THE UTAH GUEST STATUTE.

At common law a person wronged by another was permitted open access to the courts to obtain redress for the injuries or damages suffered. This ancient

right was incorporated into our Constitution by its authors in an effort to perfect the recourse available to the citizens of this State. Art. I, § 11, Constitution of Utah provides:

> "All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay;..."

While our Court has not been faced with the question of the constitutionality of the Utah guest statute, the courts of many of our sister states have considered this problem with the result being diverse theories of the meaning and intent of the framers of our constitutions. So, while there is considerable case law on the subject, there has been a complete failure to a uniform or general rule to rise out of the mass of judicial confusion. 111 A.L.R. 1011; C.J.S., Con. Law, § 709, p. 1217, n. 41.

The plaintiff does not here suggest that the Utah guest statute abides the constitutional guaranty of

a right to a remedy for the injured, for we understand this Court's interpretation of "wilful misconduct," as used in the statute, to mean something less than an intentional wrongdoing, thereby bringing our statute within the holdings of the better-reasoned cases.

What plaintiff does contend is that the guest statute is in derogation, not only of the common law, but also of the Constitution. While under Section 68-3-2, Utah Code Annotated, 1953, a strict construction of a statute contrary to the common law is not warranted in this State, we do submit that a statute adverse on its face to the clear meaning of a provision of our Constitution, must be carefully applied, and strictly limited to those situations obviously falling within the wording of the act. The guest statute, substantially limiting the rights of a person wronged to claim compensation from the wrongdoes, must be cautiously administered. A caus of action cannot fail because of the guest statute unless all of the prescribed conditions are met. It is a well-known principle of statutory construction that

every word in a statute shall be given meaning if possible. To read into the statute interpretations and applications contrary to the clear and concise wording of the statute would violate not only the obvious intent of the Legislature, but also the protective and inalienable guaranties of the Constitution.

The portion of the Utah guest statute here pertinent provides:

> "Any person who as a guest accepts a ride in any vehicle, moving upon any of the public highways of the state of Utah, and while so riding as such guest receives or sustains an injury, shall have no right of recovery against the owner or driver or person responsible for the operation of such vehicle..." Section 41-9-1, Utah Code Annotated, 1953.

The conditions thus required by this legislation are: That a guest (1) Accept a ride in any vehicle, (2) Moving upon any of the public highways, (3) Receive or sustain an injury, (4) While so riding as such guest. Unless all four conditions are satisfied by the evidence in a particular case, the action does not come within the statute, and the plaintiff is not denied a right of

redress, Plaintiff here contends that the instant situation does not meet the second and fourth requirements, and that she is entitled to compensation.

Because of the numerous decisions of the courts of various jurisdictions construing their respective guest statutes not at all consistent with each other, counsel felt it essential to survey the guest statutes of the various states, to determine the underlying reasons for this inconsistency. See Appendix. Initially, it was of interest to learn that but 27 states have guest statutes (the Kentucky guest statute having been ruled unconstitutional in VanGalder v. Foster, 243 Ky. 543, 49 S.W.2d 352). Of these, two states have statutes identical in wording to the Utah statute: North Dakota and Nevada. The remainder have statutes broader in their application than the Utah act, since they do not require compliance with as many conditions as are set forth in our statute:

1. The guest statutes of Colorado, Delaware, Florida, Idaho, Kansas, Michigan, New Mexico

Oregon, South Carolina, South Dakota, Virginia, Washington, and Wyoming are identical. They provide that the defendant is not liable for injuries sustained by a guest transported by the defendant, except under special circumstances. There is not requirement that the injury be inflicted while being transported or while the automobile is moving upon the public highways. The Texas statute is the same except that it adds "over the public highways of this State." The present Arkansas statute (the prior guest statute was rule unconstitutional in Emberson v. Buffington, 228 Ark. 120, 306 S.W. 2d 326) is similar to the Texas statute containing no requirement that the incident occur while the guest is riding.

2. Iowa, Montana, Nebraska and Vermont statutes all deny compensation for injuries sustained by a guest riding in the host's vehicle, although their statutes do not specifically require the injury to be occasioned while the guest is actually "so riding". The Illinois statute is identical except that it also includes

guest riding "upon" a motor vehicle.

3. The Alabama, Indiana, and Ohio statutes require that the guest's injuries be inflicted "while being transported" before recovery is withheld, but include all incidents whether they happen upon the public highways or elsewhere.

4. An interesting illustration in the evolution of law is presented by the California legislatures. Until 1935 (the year of the enactment of the Utah guest statute) the California guest statute was identical to the present Utah statute. The 1935 California Legislature amended that provision, removing some of the conditions and making the statute broader in its scope. This statute was replaced with a new guest statute in 1959 which is the broadest in purview of any guest statute examined. It precludes the guest from recovery from the owner or driver for injuries sustained because of the defendant's negligence, no matter where the accident takes place or whether the guest is in, on or even outside the vehicle at the time.

All of the guest statutes similarly define a "guest" and permit recovery where the defendant was intoxicated and/or committed some act more aggravated in nature than mere negligence. However, the obvious conclusion which is the product of the foregoing study is this caution: That in examining the case law of other jurisdictions it is necessary first to compare their guest statute with ours, and then to make certain that proper distinctions are drawn.

The immediate matter is one of first impression in Utah. Likewise, counsel is unable to find any case in North Dakota or Nevada (where the guest statute is identical) where the particular issue now before the Court was adjudicated. The California courts did consider this very statute prior to its repeal, and therefore supply us with the only case law construing a guest statute as limiting, from the standpoint of the protection afforded the defendant, as ours.

The first case in which the relationship was considered was Moreas v. Ferry, 135 Cal. App. 202,

26 P. 2d 886, where the plaintiff rode as a guest with the defendant to a theater. The theater was crowded so the parties decided to go to another place of entertainment. The defendant requested the plaintiff to crank the car. The plaintiff cranked, the crank kicked, plaintiff's arm was broken. The court held that under such circumstances the injury was not inflicted in any vehicle moving upon any highway nor while the guest was "so riding".

Although the cases construing a guest statute identical to ours are limited in number, one was found right in point, and completely analogous in all pertinent particulars to the instant case. Prager v. Isreal, 15 Cal. 2d 89, 98 P. 2d 729. There the parties were on a trip. Midway they stopped the car, got into the back seat, and ate their lunch. Upon finishing, they were getting out of the back seat to get into the front and resume their journey. The plaintiff was in the process of alighting from the car. With one foot on the ground and the other on the running board the car began to

move, the brakes being improperly set, throwing the plaintiff to the ground and causing the injuries she complained of. The court said:

> "The definition of the term 'guest' must be construed with the rest of the section in which it appears. The first paragraph thereof sets forth the conditions under which the guest, so defined, will be denied recovery for injuries. Those conditions are: When a guest accepts a ride in any vehicle 'moving upon any of the public highways' and receives or sustains any injury 'while so riding as such guest'. It is clear that unless all of those conditions are satisfied the plaintiff is not such a guest as to be denied recovery."

The court went on to say that a person in the process of alighting from an automobile, partly in and partly out when it begins to move, cannot be said to be "riding" in said automobile within the meaning of the statute. Concluding, the court said:

> "Furthermore, we think it clear that if the defendant failed to park his automobile in such a manner that it was safe for the plaintiff to alight therefrom, or the automobile was in such a condition that it could not have been so parked, and the plaintiff suffered an injury in attempting to alight therefrom as a result of the sudden movement of the automobile due

> to the failure of the defendant to properly set or apply the brakes, he was guilty of negligence. If such negligence was the proximate cause of the injury suffered by the plaintiff, she is entitled to recover damages against him." Emphasis added.

There are but two differences in the pertinent facts of the cited case and the case now before the Court: In the Prager case further journey was yet contemplated by the parties, whereas here the trip had terminated five minutes before the injury was inflicted; and, in the Prager case the plaintiff actually had one foot on the ground, which may not have been the case with Mrs. Andrus. The California court, however, made no distinction so fine that it depended upon the exact place of the plaintiff's feet at the time of the act complained of. Rather, the court simply and correctly held that a guest "attempting to alight" from the automobile could not be said to be "riding" therein, and that the facts therefore were outside the guest statute.

Actually, it should be pointed out, the fact that Mrs. Andrus was in the process of alighting from the

defendant's automobile at the time of the injury is not really critical, for at the time the defendant was also outside the car, leaving the vehicle without a driver or operator. In construing the Iowa guest statute which provides:

> "The owner or operator of a motor vehicle shall not be liable for any damages to any passenger or person riding in said motor vehicle as a guest or by invitation and not for hire..." Section 321.494, Code of Iowa, 1962,

the highest court of that state held that where the plaintiff, attempting to enter the automobile, was injured when the door fell off, she was not a guest within the meaning of the statute since the defendant was not in the car at the time, and since, therefore, there was no driver operating the car. The journey could not start until the driver was in the car, and until that time the plaintiff was not "riding in said motor vehicle" driven or operated by a driver. Puckett v. Pailthorpe, 207 Iowa 613, 223 N.W. 254. Applying this holding to the case now before the Court, it cannot be

said that Mrs. Andrus was "so riding as such guest" in the defendant's automobile where the defendant was outside the car at the time of the wrong and resulting injury.

In addition to the failure of the instant case to meet all of the conditions to the Utah guest statute, as the well-reasoned Prager and Puckett cases demonstrate, the plaintiff submits that there is further reason why the guest statute is not here applicable to deprive her of compensation for the injuries suffered and the expenses incurred. The host-guest relationship under the statute is in the nature of an implied contract, and the conduct and intent of the parties establish the status. It commences with the undertaking of transportation and terminates upon arrival at the agreed or implied destination. Owens v. Young, 59 Wash. 2d____, 365 P.2d 774. Some cases have even gone so far as to hold the relationship suspended temporarily during the period after arrival at the primary destination and before beginning the return trip. Harrison v. Gamatero, 52

Cal. App. 2d 178, 152 P. 2d 904. Other cases have gone even further, holding that a temporary interruption in the journey itself, whether intended or not, suspends the guest statute until the ride is resumed. Ethier v. Audette, 307 Mass. 111, 29 N.E. 2d 707 (where the parties, enroute to plaintiff's home, stopped at a restaurant to pick up food); Rohr v. Employers Liability Association Corp., Ltd., of London, 243 Wisc. 113, 9 N.W. 2d 627 (where the parties were outside the automobile repairing a flat tire); Haskell v. Perkins, 16 Ill. App. 2d 428, 148 N.E. 2d 625 (where the parties stopped to assist a stranded motorist); Clinger v. Duncan, 166 Ohio St. 216, 141 N.E. 2d 156 (where the plaintiff left the car to see if another passenger was ready to go, and was injured while re-entering).

In the case before the Court, the journey had ended five minutes before the negligent act of the defendant and the accompanying injuries to the plaintiff were inflicted. With their arrival at the gate of Mrs.

Andrus' home, they had reached their destination. At that point of arrival, the gratuitous right of the plaintiff expired and the implied contract between the parties terminated. The subsequent act of the defendant constituting negligence was not performed in the course of carrying out the gratuitous undertaking which she had assumed.

The host-guest relationship did not exist between the parties at the time of the injury, and Mrs. Andrus is entitled to prosecute her claim against the defendant in the courts of this State.

The cases cited in the Appellant's Brief are not persuasive. Inasmuch as there is no guest statute in Massachusetts which the corresponding legislative requirements and conditions, it is impossible to apply the sundry theories of the case law of that state to the present situation which is controlled by enactment.

The Ohio case cited by the defendant (Eskelman v. Wilson, 80 N.E.2d 803) points out the fact that every word in a statute must be given meaning if

possible. The condition there required by the guest statute is that the injury take place while the guest was in or upon the motor vehicle. Since the plaintiff in that case was two feet away from the car it could not be held that the cited condition was met, and she was permitted recovery. Of course, there is no such condition in the Utah statute, and the fact that Mrs. Andrus was still partly in the car at the time of the defendant's negligent act is immaterial.

Both of the Illinois cases mentioned in the Appellant's Brief (Tallios v. Tallios, 359 Ill. App. 299, 112 N.E. 2d 723; Randolph v. Webb, 194 N.E. 2d 379) are distinguishable on the facts. In both cases the injury occurred during the journey and while further trip was contemplated by the parties. The gratuitous undertaking of the defendant had not ceased. The implied contract between the parties was yet executory. As the Illinois court said, in the former case, the host-guest relationship "is not interrupted or terminated by a temporary absence from the conveyance for a

reasonable and usual purpose." It should also be remembered that the Illinois guest statute does not require the injury to take place while the guest is riding in the automobile nor upon the public highways of the state, and thus affords much broader protection to the defendants and their insurance carriers than does the Utah statute. The California case cited by defendant (Frankenstein v. House, 41 Cal. App. 2d 813, 107 P. 2d 624) is distinguished on the same ground.

CONCLUSION

At the moment of the commission of the wrongful act and the infliction of injury, the host-guest relationship previously existing between the parties had terminated. The conditions of the Utah guest statute were not satisfied since the injury was not sustained shile Mrs. Andrus was "so riding as such guest" in a vehicle "moving upon any of the public highways," but while she was attempting to alight from the driverless car of the defendant. To deny the plaintiff her constitutional right of recovery would deprive the

guest statute of its clear and unambiguous meaning.

Respectfully submitted,

KIPP AND CHARLIER and
CRAIG T. VINCENT
520 Boston Building
Salt Lake City, Utah
Attorneys for Plaintiff
and Respondent

APPENDIX OF GUEST STATUTES

Alabama	Title 36, § 95, Code of Alabama, Recompiled, 1958.
Arkansas	Section 75-913, Arkansas Statutes Annotated, 1947.
Califronia	Section 17158, Deering's California Codes.
Colorado	Section 13-9-1, Colorado Revised Statutes, 1963.
Delaware	Section 21-6101, Delaware Code Annotated.
Florida	Section 320.59, Florida Statutes, 1963.
Idaho	Section 49-1401, Idaho Code.
Illinois	Section 9-201, Illinois Annotated Statutes.
Indiana	Section 47-1021, Burns Indiana Statutes, Annotated.
Iowa	Section 321, 494, Code of Iowa, 1962.
Kansas	Section 8-122b, General Statutes of Kansas, Annotated, 1949.
Michigan	Section 256.29, Compiled Laws, Michigan, 1948.
Montana	Section 32-1113, Revised Codes of Montana, 1947, Annotated.
Nebraska	Section 39-740, Revised Statutes of Nebraska, 1943.
Nevada	Section 41.180, Nevada Revised Statutes.
New Mexico	Section 64-24-1, New Mexico Statutes, 1953, Annotated.
North Dakota	Section 39-15-02, North Dakota Code, Annotated.
Ohio	Section 6308.6, Page's Ohil General Code, Annotated.
Oregon	Section 30.110, Oregon Revised Statutes.

South Carolina	Section 46-801, Code of Laws of South Carolina, 1952.
South Dakota	Section 44.0362, Supplement to South Dakota Code of 1939.
Texas	Section 6701b, Vernon's Texas Statutes Annotated.
Utah	Section 41-9-1, Utah Code Annotated, 1953.
Vermont	Title 23, Section 1491, Vermont Statutes Annotated.
Virginia	Section 8-646.1, Code of Virginia, 1950
Washington	Section 46.08.080, Revised Code of Washington.
Wyoming	Section 31-233, Wyoming Statutes, 1957